IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1823 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAILESH KARSANBHAI MAKWANA

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 1823 of 2002

MR DJ CHAUHAN for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 13-1-2002 passed by the Police Commissioner, Rajkot City and he has been declared

as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave, for the respondents. I have also perused the material on record. According to learned advocate for the petitioner, the wife of the detenu has submitted a representation by R.P.A.D. to the authority on 18-1-2002. Drawing my attention towards the representation, he has contended that representation has been rejected by the authority on 30-1-2002, but same has been communicated to the detenu on 31-1-2002 and hence, there is a delay in deciding the representation. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that wife of the detenu has sent the representation on 18-1-2002 to the authority and though it was rejected by the authority on 30-1-2002, same has been communicated to the detenu on 30-1-2002 and hence, there is a delay in deciding the representation. However, no explanation has been putforward by the authority explaining satisfactorily the

said delay. Since no explanation has been putforth by the concerned authorities for the said delay, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 13-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Sailesh Karsanbhai Makwana is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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